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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Confirmation No. 8733**
Kenji OKAMOTO et al. : Docket No. 2003-1368A
Serial No. 10/677,268 : Group Art Unit 3747
Filed October 3, 2003 : Examiner Thomas Moulis
FUEL INJECTION DEVICE

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

THE COMMISSIONER IS AUTHORIZED
TO CHARGE ANY DEFICIENCY IN THE
FEES FOR THIS PAPER TO DEPOSIT
ACCOUNT NO. 23-0975

Sir:

Applicants hereby elect Species II, directed to a method and apparatus of controlling fuel pressure during engine startup. It is submitted that claims 2 and 9 read on elected Species II.

Furthermore, the Applicants also hereby respectfully traverse the Examiner's Restriction Requirement between Species II and Species III. In this regard, the Examiner asserts that the subject matter of "species" II, directed to a method and apparatus of controlling fuel pressure during engine startup, and the subject matter of "species" III, directed to a method and apparatus for controlling fuel pressure by detecting pressure variation, are separate species, presumably because they are classified in separate subclasses. However, that is not the proper criterion for determining separate species as set forth in the Manual of Patent Examining Procedure (MPEP). Specifically, MPEP Chapter 806.04(f) explains that "claims to be restricted to different species must be mutually exclusive." In other words, claims to be restricted to different species must recite mutually exclusive characteristics of each species. However, it is submitted that the subject matter of Species II and the subject matter of Species III are not mutually exclusive. In particular, it is submitted that the controlling of fuel pressure during engine start up (identified as Species II by the Examiner) can be performed by detecting pressure variation (identified as

Species III by the Examiner). Thus, because the subject matter in the embodiment of Species II and the subject matter in the embodiment of Species III overlap, it is submitted that these embodiments are clearly not mutually exclusive. Thus, the Examiner is respectfully requested to withdraw the restriction between Species II and Species III, and to also examine Species III in this application. In this regard, it is submitted that claim 3 reads on Species III.

In view of the above, a full examination on the merits of this application is respectfully requested.

Respectfully submitted,

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